

INSTRUCTION NO. [5-103(a)(i)]

[Mitigated Deliberate Homicide As A Lesser Included Offense, 2003]

The Defendant is charged with deliberate homicide. Mitigated deliberate homicide is a lesser-included offense of deliberate homicide. In order to find the Defendant guilty of the lesser offense of mitigated deliberate homicide, the State must prove the following two elements:

First, that the Defendant caused the death of _____, and

Second, that when the Defendant did so, he [she] acted purposely or knowingly;

Mitigating circumstances that reduce deliberate homicide to mitigated deliberate homicide are not an element of the reduced crime that the State is required to prove, or an affirmative defense that the Defendant is required to prove. Neither party has the burden of proof as to mitigating circumstances, but either party may present evidence of mitigation. The reasonableness of such explanation or excuse shall be determined from the viewpoint of a reasonable person in the Defendant's situation.

If you find from your consideration of all the evidence that the State has proved beyond a reasonable doubt that the Defendant caused the death of _____, and that when the Defendant did so, he [she] acted purposely or knowingly, and that the Defendant, at the time he [she] caused the death of _____, was acting under the influence of extreme mental or emotional stress for which there is reasonable explanation or excuse, then you should find the Defendant guilty of the lesser offense of mitigated deliberate homicide.

However, if you find from your consideration of all the evidence that the State has proved beyond a reasonable doubt that the Defendant caused the death of _____, and that when the Defendant did so, he [she] acted purposely or knowingly, but was not acting under the influence of extreme mental or emotional stress for which there is a reasonable explanation or excuse, then you should find the Defendant guilty of deliberate homicide.

If you find from your consideration of all the evidence that either of these elements has not been proven by the State beyond a reasonable doubt, then you must find the Defendant not guilty of deliberate homicide and not guilty of mitigated deliberate homicide.

GIVEN: _____
District Judge

Source: MCJI 5-103(a)(i); MCA §45-5-103(3)

Plaintiff's Proposed Instruction No. _____ Defendant's Proposed Instruction No. _____

Given as Instruction No. _____ Refused _____ Withdrawn _____ By _____

[Mitigated Deliberate Homicide As a Lesser Included Offense, 2003, Source and Comments]

SOURCE: MCA § 45-5-103(3) (2003).

COMMENT: Cite as MCJI 5-103(a)(i).

This instruction incorporates the language of the amended version of MCA §45-5-103, passed by the 2003 legislature. It should only be given in cases in which the jury will be instructed on mitigated deliberate homicide as a lesser-included offense. **IF THE STATE CHARGES MITIGATED DELIBERATE HOMICIDE, INSTRUCTION NO. 5-103(a) SHOULD BE GIVEN.**

This instruction should only be utilized for offenses committed on or after October 1, 2003.

Note also that this instruction is unique to the mitigated deliberate homicide lesser included offense situation. It should be utilized in place of Instruction No. 1-011 if the evidence in the case does not warrant other lesser included offense instructions. If there are additional counts charged, or other lesser included offenses justified by the evidence, warranting a lesser included offense instruction for those offenses as well, then this instruction should be given in conjunction with Instruction No. 1-011.